

Application Serial No. 10/780,378
Amendment dated June 24, 2009
Reply to the Office Action of February 2, 2009

REMARKS

Claims 56-66, 68, 69, and 71-95 are pending. Claims 1-55, 67, and 70 have been cancelled. New Claims 76-106 have been added.

Claim Rejections 35 U.S.C. § 103(a)

Claims 56, 58-69 and 71-75 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,994,757 to Martinez ("Martinez '757") in view of U.S. Patent No. 5,824,103 to Williams ("Williams '103").

Applicants respectfully submit that amended independent Claims 56 and 69 are not obvious over Martinez '757 in view of Williams '103, as Martinez '757 and Williams '103, either alone or in combination, fail to disclose or suggest each and every limitation of amended independent Claims 56 and 69. Amended independent Claim 56 calls for a tibial augment system including, *inter alia*, a tibial implant comprising a tibial plate and a tibial post extending from the tibial plate, and a tibial augment comprising an annular body defining an interior wall and an exterior wall, the exterior wall of the tibial augment sized to fit within a cortex of a tibia and having an anterior/posterior dimension, a medial/lateral dimension, *and a height*, the anterior/posterior dimension being no less than 30 mm and no more than 40 mm, the medial/lateral dimension being no less than 40 mm and no more than 80 mm, and the height being equal to about 15 mm. Support for the amendments to Claim 56 may be found in at least paragraphs [0052], [0060].

Additionally, amended independent Claim 69 calls for a tibial augment system including, *inter alia*, a tibial augment having an exterior wall and a height extending between a proximal face and a distal face, *at least a portion of said exterior wall having a distal taper along at least a portion of a height between the proximal face and the distal face, the distal taper being between about 8 degrees and about 30 degrees*. Support for the amendments to Claim 69 can be found in at least paragraphs [0048], [0049].

In forming the rejection of amended independent Claim 56, the Examiner indicates, and Applicants respectfully agree, that Martinez '757 fails to disclose size ranges for a tibial

augment. Thus, in forming the rejection, the Examiner relies on Williams '103 for providing this disclosure. However, in contrast to amended independent Claim 56, Williams '103 fails to disclose or suggest a tibial augment having a height being equal to about 15 mm. In contrast, base plate 10 of Williams '103, which is relied upon by the Examiner in forming the current rejection, has a height to rail 16, shown in Fig. 5, of 0.173 inches (4.4 mm) and a height to stop 18 of approximately 0.286 inches (7.2 mm).

Similarly, in forming the rejection of Claim 69, the Examiner relies on Williams '103 for providing disclosure related to the size of the tibial augment. However, nowhere does Williams '103 disclose a tibial augment having a distal taper along at least a portion of a height between a proximal face and a distal face, the taper being between about 8 degrees and 30 degrees.

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claims 56 and 69, as well as Claims 58-68 and 71-75, which depend therefrom, are not obvious over Martinez '757 in view of Williams '103.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 57 and 70 are rejected under 35 U.S.C. § 103(a) as being obvious over Martinez '757 in view of Williams '103 in view of additional references. In forming the rejection of Claims 57 and 70, the Examiner relies on Martinez '757 and Williams '103 for disclosing or suggesting each and every limitation of amended independent Claims 56 and 69, from which Claims 57 and 70 depend. For at least the reasons set forth above with respect to amended independent Claims 56 and 69, Martinez '757 and Williams '103, either alone or in combination, fail to disclose or suggest each and every limitation of amended independent Claims 56 and 69. The Examiner's citation of additional references fails to overcome this deficiency as none of Martinez '757, Williams '103, and the additional cited references, either alone or in combination, disclose or suggest each and every limitation of amended independent Claims 56 and 69.

For at least the foregoing reasons Applicants respectfully submit that Claims 57 and 70, which depend from amended independent Claims 56 and 69, respectively, are not obvious over Martinez '757 in view of Williams '103 and further in view of the additional cited references.

New Claims

New Claims 76-106 have been added.

New Claims 76-83 depend from Claim 69 and are allowable for at least the reasons set forth above with respect to amended independent Claim 69.

New independent Claims 84 and 95, as well as claims 85-94 and 97-106 that depend therefrom, are patentable over the prior art of record, as none of the prior art of record discloses or suggests a tibial augment system for a knee joint including a tibia including, *inter alia*, a tibial augment having a height being equal to about 30 mm, as called for in independent Claim 84, or a tibial augment system for a knee joint including a tibia including, *inter alia*, a tibial augment defining a lateral height between a proximal face and a distal face at a lateral most point of the tibial augment, one of the medial height and the lateral height being at least 15 mm and the anterior height being nonequal to the lateral height, whereby the distal face defines a stepped surface, as called for in independent Claim 95. Support for the limitations of Claims 84 and 95 can be found in at least paragraphs [0054], [0060] and [0055]-[0059], respectively.

Conclusion

It is believed that the above represents a complete response to the Office Action and reconsideration is requested. Specifically, Applicants respectfully submit that the current application is in condition for allowance and such action is earnestly solicited.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize

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Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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Name of Registered Representative



Signature

June 24, 2009

Date